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EXAMINER

BRADEN, SHAWN M

ART UNIT PAPER NUMBER

3727

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/629,017 | Applicant(s) BARON, SHARON | |
| | Examiner Shawn M. Braden | Art Unit 3727 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-14 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the continuously varying concavity must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Information Disclosure Statement

2. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

4. Claims 8,9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In dependent claim 8 applicant claims "frustoconical lower axial extension" , in independent claim 2, applicant claims " a cylindrical lower axial extension". Examiner notes the axial extension cannot be both cylindrical and

Art Unit: 3727

frustoconical at the same time. For examining purposes examiner will continue with the cylindrical shape.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 2,3 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schroeder (USPN 2,996,208).

With respect to claim 2, Schroeder shows an upper component (12) with a tapering side wall and a cylindrical lower axial extension (18), a lower component (22), an upper aperture (24) for the receipt of the axial extension during use.

With respect to claim 3, Schroeder shows a width within one fifth to one eighteenth of Schroeder's height (fig. 3).

7. Claims 2,3,6,8,9,11,12,14 are rejected under 35 U.S.C. 102(a/e) as being anticipated by Immerman (USPN 6,604,648).

Art Unit: 3727

With respect to claim 2, Immerman clearly shows an upper component (3) with tapering sidewalls, and a cylindrical lower axial extension (15), a lower component (5), and an upper aperture (28) for the receipt of the axial extension during use.

With respect to claim 3, Immerman shows a width within one fifth to one eighteenth of the height (fig. 1).

With respect to claim 6 Immerman show an embodiment with an axial extension (42), which is of an extended length terminating in a rib (44) of a slightly larger diameter than the axial extension (fig. 9b)

With respect to claim 8,9 Immerman shows the upper component (3) has a frustoconical lower axial extension (11) and the lower component (5) has a frustoconical pocket (25) for receiving the extension. The extension and the pocket are smooth.

With respect to claims 11,12 Immerman again shows an embodiment with an axial extension (42), which is of an extended length terminating in a rib (44) of a slightly larger diameter than the axial extension (fig. 9b). The rib is circumferential.

With respect to claim 14, Immerman shows the extension and lower component are each formed with screw threads for removably coupling the upper component and lower component (fig. 11)(col. 3 ln. 17-20).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3727

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-4 rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder (USPN 2,996,208) in view of Abramowski (USPN D486, 693). Schroeder discloses the invention substantially as claimed. However Schroeder does not disclose a sidewall of continuously varying concavity, Schroeder also lacks a tangent of the side wall being closer to parallel to the central axis the closer to the lower end.

Abramowski appears to be a one piece container but it teaches a sidewall of continuously varying concavity to the same extent as applicant. Abramowski also teaches a tangent of the side wall being closer to parallel to the central axis the closer to the lower end. Both Abramowski and Schroeder are drinking vessels.

Therefore it would have been an obvious matter of design choice to make the top of the drinking vessel shaped like Abramowski's top portion, since applicant has not disclosed that a sidewall of continuously varying concavity or a tangent of the side wall being closer to parallel to the central axis the closer to the lower end, solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a sidewall of continuously varying concavity or a tangent of the side wall being closer to parallel to the central axis the closer to the lower end.

With respect to claims 1-4, Schroeder as applied above clearly shows a separable two-component drinking systems (fig. 2). Schroeder shows an upper component (10) having an upper end (12) and a lower end (16) with an inwardly tapering side wall of

Art Unit: 3727

continuously varying concavity, Schroeder clearly shows a axial extension (18), a shoulder between lower end (16) and the axial extension. Schroeder shows a continuous curve along length with the diameter greater than the lower end and with a tangent of the side wall being closer to perpendicular to the central axis the closer to the upper end and with a tangent of the side wall being closer to parallel to the central axis the closer to the lower end. Schroeder also shows a lower component (20) having an upper aperture (24) with a diameter essentially equal to the diameter of the axial extension for the receipt of the axial extension during use. Schroeder also shows the lower component (20) has a lower aperture. Schroeder's bottom is an open bottom, which has the same structure and recitation as applicants lower aperture.

The width of Schroeder's system is in-between one fifth to one eighteenth of its height.

Schroeder's upper component (10) is inherently capable of stacking. Schroeder's lower component (20) is inherently capable of stacking.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. With respect to claims 1-4, Buonauro discloses the claimed invention except for the "axial extension" and the "lower component's upper aperture" are in the opposite arrangement. It would have been obvious to one having ordinary skill in the art at the time the invention was made to switch these two components since it has been held

Art Unit: 3727

that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167.

With respect to claims 1-4 Buonauro as modified above shows an upper component (A) having an inwardly tapering side wall of continuously varying concavity, a cylindrical lower axial extension (2), a shoulder between (1) and (2), the side wall having a continuous curve along its length to the same extent as applicants, a tangent of the side wall being closer to perpendicular to the central axis the closer to the upper end and with a tangent of the side wall being closer to parallel to the central axis the closer to the lower end, a lower component (B), an upper aperture (8) ,as modified by a reversal of parts, with a diameter essentially equal to the diameter of the axial extension for the receipt of the axial extension during use, a lower aperture (9) with a diameter greater than the diameter of the upper aperture, the width of Buonauro is from about one fifth to one eighteenth of its height, and Buonauro inherently is capable of, upper and lower components adapted for stacking purposes.

10. Claims 2,11,13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bolte (USPN 4,872,569).

With respect to claim 2, Bolte clearly shows an upper component (20) with tapering sidewalls (fig. 13), and a cylindrical lower axial extension (22), a lower component (24), and an upper aperture (34) for the receipt of the axial extension during use.

With respect to claims 11,13 Bolte shows an embodiment with an axial extension (22), which is of an extended length terminating in a rib (26) of a slightly larger diameter

Art Unit: 3727

than the axial extension (22) (fig. 13). The ribs (26) of Bolte are on the lower aperture side (34) rather than the axial extension (22) It would have been obvious to one having ordinary skill in the art at the time the invention was made to switch the ribs from the lower component to the upper component, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167. Bolte teaches the ribs (26) in order to let condensation pass through the connection (col. 11 ln. 49-54)

Allowable Subject Matter

11. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

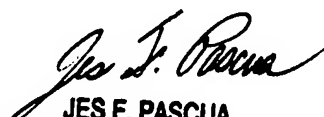
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMB


JES F. PASCUA
PRIMARY EXAMINER